

INVESTMENT TRANSACTIONS BETWEEN PRIVATE INDIVIDUALS ACROSS NATIONAL FRONTIERS

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There are two major areas of activity within the field of private transactions across international boundaries. The first and best understood is that of the ordinary flow of commerce between private traders and firms located in different countries. The second is that of the flow across international boundaries of funds, material, equipment, technology and services for capital projects. The first of these categories, that is, the ordinary flow of trade and commerce, is as ancient as recorded time—even more so. Egypt was sending bronze south to the land of Kush and west along the Mediterranean long before the scribes recorded their first hieroglyphs. The Phoenicians made a way of life from the seafaring trade; the development of trade and commerce has continued across the centuries. The history of foreign investment, however, is in all probability somewhat less ancient since the aim of the ancient was to seek immediate tribute rather than long-term profits out of investments. In any case, even here there was some overseas investment, as witness the Roman tin mines in Britain.

The difficulties and intricacies of normal trade and commerce, as distinct from developmental and capital activities, are well understood and constitute a well recognized and institutionalized area of trans-national activity. Although the trans-national commercial trader is aware that there are grave risks inherent in his activities and that there are many strange and unusual problems, he is, on the other hand, aware that he is operating within a well understood framework of institutions, customs, practices, and indeed, law. The basic principles of a *negotiable* instrument are well understood in Delhi, Bogota, Saigon and Quito, as well as in New York and Paris. The basic premises and the institutions of admiralty law are almost universal in their application even though they may vary from place to place in particular. The trans-national trader knows that it is commonplace to secure redress on a foreign contract or even to sue on a foreign judgment. His activities are large scale and if he is sophisticated in approach, he is well aware of, and takes advantage of, the possibilities of international commercial arbitration.

The credit risks involved in the ordinary commercial transaction are usually short term but even if they are longer term, those usually assuming the longer risks, such as banks and other financial organiza-

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tions, are well aware of the institutions forming the framework within which foreign trade is carried on, as well as of the complexities of the required operations. Finally, those involved in ordinary trans-national commercial activities have available the requisite information and skills to meet the problems. Every bank dealing in foreign trade and every well equipped export department has available text books and monographs on export-import trade and on international trade.¹ Even the novice can turn to these standard texts and receive some comprehensible guidance and information.

Since ordinary trans-national commercial activities are so well understood and so institutionalized, this paper will be directed toward the problems of capital investment and of the flow of capital across national boundaries rather than toward the more usual problems of routine trade.

Even within the area of trans-national investment, there is a vast disproportion in the sum of knowledge and skills available. Thus, investment in North America, in the more advanced areas of South America and in Europe is quite common.² Those who make the investments are aware that there are reasonably reliable data available and that the customs, consumption habits and mores of these areas constitute ascertainable patterns. When investment is contemplated in the less developed areas, however, *i.e.*, in Africa, in Asia, and in certain areas of South America, these factors are not operative. Furthermore, the knowledge and skills available to supervise an investment in these less developed areas is much more limited.

In the years prior to World War I, such investment as took place across national boundaries was carried on under the protective eye of powerful Western Governments who jealously protected the interests and *investments* of their nationals. These Western Governments were dedicated to the sanctity of private property. If any lesser nation dared presume to move against the investments belonging to the nationals of the Western Government, sabers rattled and cruisers steamed. The law of the jungle was well understood; woe betide the tyrant who moved against a Western investment.³ The Western pow-

¹ For a thorough discussion of the operations of the international department of a major bank and of the techniques of international banking, see, Shaterian, William S., "Export-Import Banking" (2d ed. 1956).

² Direct U.S. investment in 1959 amounted to \$5.3 billion in Europe, to \$10.2 billion in Canada and to \$9.0 billion in Latin America. These figures are to be compared with a worldwide direct U.S. investment figure of \$29.7 billion. United States Department of Commerce, Office of Business Economics, "U. S. Business Investments in Foreign Countries" 1 (1960).

³ For only a short description of the grisly instruments available and of their use, see 6 Hackworth, Digest of International Law 147-159 (1943).

ers in addition to insuring effectively the stability of political climate for an investment abroad, also imposed Western business ethics and Western business practices. Investment in the less developed areas, almost inevitably carried with it Western management, Western technology and Western organization as in the Suez and Panama Canals and in the Iranian oil fields.

Following World War I, and the advent on the world scene of the Communist power, trans-national investment became increasingly hazardous. On the one hand, the Communist philosophy was, and is, dedicated to the disruption of ordinary capitalistic relationships and to the overthrow of "Colonialism." On the other hand, the more recent rising tide of nationalistic developments in the colonial areas has washed away the Western imposed stability and has replaced it with a militant drive towards both self-determination and local control of local assets. As a natural corollary of this colonial revolution there has been a tendency in many areas to attack the pre-existing investments by the colonial powers.⁴ The new states, while on the one hand welcoming new investment, still look askance at the foreigner's economic activities within the new borders. The fate of U.S. investments in Russia and in the satellite countries is indicative of the Communist attitude towards trans-national investment, while the events in Cuba Mexico and Indonesia illustrate the clash between trans-national and national aspiration.

Today, the traditional Great Power enforcement of the sanctity of foreign investments has disappeared; the Suez incident was the coup de grace. Today, the trans-national investor must, to a great degree, rely on his own wit and his own resources. Paradoxically, at the very time that the security of trans-national investment is decreasing, the demand for such investment is increasing. The so-called "revolution of rising expectations" in these areas has resulted in a clamor for ever increasing capital investment.⁵ Obviously, the source of these capital investments must be found in some place other than a country barely rising from a subsistence economy.

The people of these less developed areas have seen the possibilities of Western style technology and are demanding an increased share in the world's available goods at any and all costs. Some of the newer nations have chosen to follow the route of peaceful development in the hope they can meet their peoples' needs without violent means, while

⁴ One need only mention the expropriation of Dutch assets by Indonesia, the seizure of British and French holdings by Egypt, and the flight of capital (French) from Morocco and Tunisia.

⁵ For a description of this demand and an analysis of its motivation and of the United States answer, see Millikan and Rostow, "A Proposal, Key to an Effective Foreign Policy" (1957).

other nations have followed the path of violence as decreed by the Communist doctrine. The United States has espoused this aspiration on the part of the peoples of the less developed areas for increased development.⁶

This espousal is based on both utilitarian and idealistic considerations. On the one hand there is the view that the existence of capital developments and indeed of major capital installations in the less developed areas will create a sociological framework more conducive to a capitalistic or socialistic society than to a communistic society.⁷ This expectation unfortunately has not always been proven by experience; nevertheless, it still remains one of the tenets of our Government's philosophy and any change from that policy seems remote. On the other hand, and entirely apart from the strictly utilitarian view, however, the U.S. Government has also espoused the idealistic concept that the Western world owes it to the less developed areas of the world to assist them in the achievement of economic development and economic improvement.⁸

Developmental activities in the less developed areas has by and large been a Governmental preserve. This concentration by the United States Government has arisen from a variety of factors. In the first place, many of the less developed areas of the world lack the basic infrastructure facilities, i.e., roads, railroads, communications, etc., necessary to a developing cash economy. The returns from such infrastructure projects must, by their very nature, lack interest for the private investor. However, the private investor's willingness to consider any capital investment in a country is discouraged by the very lack of these basic infrastructure facilities, together with the lack of stability.

Despite these factors, there has developed an increasing belief that the private sector of the United States economy should participate in

⁶ Message from the President on the Mutual Security Program, H.R. Doc. No. 97, 86th Cong., 1st Sess. (1959); Testimony of Secretary Dulles, "Hearings on the Mutual Security Act of 1958 Before the Committee on Foreign Affairs of the House," 85th Cong., 2d Sess. 182 (1958); Testimony of Secretary Herter, "Hearings on the Mutual Security Act of 1959 Before the Committee on Foreign Affairs of the House," 86th Cong., 1st Sess., 6-9 (1959); Committee on Foreign Affairs of the House, "Report on Foreign Policy and Mutual Security," H.R. Rep. No. 551, 85th Cong., 1st Sess. IX (1957).

⁷ Message from the President on the Mutual Security Program, H.R. Doc. No. 97, 86th Cong., 1st Sess. (1959); Testimony of Secretary Dulles, "Hearings on the Mutual Security Act of 1958 Before the Committee on Foreign Affairs of the House," 85th Cong., 2d Sess. 182 (1958); Testimony of Secretary Herter, "Hearings on the Mutual Security Act of 1959 Before the Committee on Foreign Affairs of the House," 86th Cong., 1st Sess., 6-9 (1959).

⁸ S. Rep. No. 412, 86th Cong., 1st Sess. 4-6 (1959).

developmental activity. This interest has been reflected through the years in legislation, but not to the same degree, unfortunately, in practice.⁹ More recently, however, there has been a growing realization by many segments of our economy that there are large profits to be made both from the sale and installation of capital projects and from the equity participation in such projects. This trend has resulted in an increased emphasis on trans-national investment and an increased interest in participating in developmental activities in the less developed areas. Unfortunately, however, many private firms are understandably reluctant to enter into this field of trans-national activity.

There are four major reasons why individual and corporate investors are not knocking each other over in an attempt to enter the field of trans-national investment. These factors are as follows:

1. Risk of loss of the investment, often contrasted to the opportunities of safer, or at least, more familiar investment opportunity in the United States;
2. Lack of knowledge of the area where the investment might be made and of conditions in the area;
3. Lack of knowledge of the impact of United States and foreign taxes on the investment;
4. Lack of risk capital.

Perhaps the principal deterrent to overseas investment is a combination of lack of knowledge of the investment country combined with a fear, and actual risk, of loss of investment.¹⁰ The lack of stable political and economic conditions throughout most of the so-called less developed areas is self-evident. Every day brings new generalized reports of revolutions, confiscations, expropriations and deterioration of economic conditions throughout the have-not nations and indeed, in some of the nations more favorably endowed. These reports in themselves generally deter a potential investor from examining into the investment opportunities. The modern capital investor has developed some experience with investment in North America and in Western Europe, where conditions are relatively stable. The combination of stability and experience has resulted in more investment being made in those areas with the inevitable result that the overseas investment

⁹ Mutual Security Act of 1954, as Amended, § 413(a), 68 Stat. 846 (1954), as amended 22 U.S.C. § 1933(a) (1958); United States Department of State, "Expanding Private Investment For World Economic Growth" (1959).

¹⁰ For thorough discussions of the reasons why corporations do not invest overseas, see, Barlow and Wender, "Foreign Investment and Taxation" 192-217 (1955); United States Department of Commerce, Bureau of Foreign Commerce, "Factors Limiting United States Investment Abroad," Part 2, 23-38 (1952).

dollar tends to stay in those areas and that very little investment is made in the less developed areas.¹¹

Among the principal dangers giving rise to the risk of the loss of an investment are the following:

1. *Political upheaval with insurrection and civil war at one extreme and political and economic harassment at the other.*

The fate of United States investment in Cuba bears eloquent testimony as to what can happen to investments as a result of civil war and political instability. It is small wonder, therefore, that the prudent investor is mortally afraid of revolutions and civil war. The dismal history of expropriation in many countries testifies to the dangers to an investment arising from political upheaval. Short of confiscation and expropriation, there are other dangers incident to political instability. A government which is friendly to foreign investment may be replaced by one less friendly. Even though there is neither expropriation nor confiscation, the investment may be rendered worthless by a course of harassment and unequal application of local laws and regulations to the extent that the investment becomes worthless. The opportunities for such harassment are legion. Zoning laws may be construed to the detriment of the foreign investment. Labor laws may be so construed that the new corporation is unable to fire or to discharge worthless employees. Taxes may be imposed which in their application affect only, or disproportionately, the foreign investor. He may be precluded from having access to foreign currency, even though his local national competitors, under the currency regulations, have free and ready access to such currency for the purpose of making necessary importations. No matter what the technical framework of the laws may be, the foreign investor must be at least aware of how they may be applied.

2. *War.*

The danger of nuclear war hangs over every investment made, either domestic or foreign. To assume a nuclear cataclysm is to assume the worthlessness of almost any investment. Short of the nuclear Armageddon, there is the great danger of a local brushfire war, as in Korea or Suez, wiping out an investment. Obviously, the danger of a brushfire war is infinitely less in the areas of Europe within the walls of NATO, or in Canada. In the less developed areas of the world, however, these dangers of the brushfire war are considerably increased and the danger varies considerably with geography. Thus, there is relatively less danger of such a conflict in India than there is in Laos.

¹¹ U.S. Department of Commerce, *op. cit. supra* note 2 at 1, 7-18.

The greater the possibility of such conflict, the greater the deterrent to private investment.

3. *Expropriation.*

The danger of expropriation, confiscation or nationalization is ever present. No one wishes to make an investment in an overseas area and be faced with the risk of having the investment confiscated on a political whim. Although expropriation, confiscation and nationalization have taken place at one time or another in almost every area of the world, the political and economic instability of the less developed areas makes the possibility of expropriation much greater in those areas. As pointed out under Item 1 above, there is even greater danger of inequitable and arbitrary application of laws and regulations resulting in loss of investment. The U.S. investor is faced with a basic dichotomy in his attitude toward expropriation, confiscation and nationalization. Our own history on this score has not been without blemish, as witness the incidents connected with the Revolutionary War, the Civil War, and World Wars I and II.¹² Furthermore, we are still a revolutionary people espousing the aspirations of any dependent people for actual independence, both economically and politically. In many areas of the world, we have looked the other way when a new government, by a stroke of the pen, expropriated the assets of nationals of the former colonial power. Necessarily, however, when our own ox has been gored, as in Cuba, we must register our strong protest.

4. *Exchange and Convertibility Problems.*

Nearly every country in the less developed areas of the world has currency control and export-import controls. Since the central governments and the economies of these less developed countries have only limited resources and since they wish to devote these resources to developmental projects, the import of goods and services for luxury purposes is curtailed. At the same time currency and other controls are established to maintain the soundness of the currency. These currency controls can be extremely complicated and can also be shifted erratically within a very short period.¹³ Currency controls and export-

¹² The still rampant controversy attendant upon the seizure of enemy assets during World War I and World War II need only be mentioned. There is also the obvious question concerning when condemnation becomes expropriation or confiscation.

¹³ The recent history of the control of the Philippine peso is illustrative of the point. Two years ago the peso was firmly pegged at two pesos to the dollar—a tax however was imposed by the Central Bank on the purchase of foreign currency. Subsequently the control system has gone through a rapid series of gyrations and now there are several different rates of exchange. In fact, a single transaction may be consummated at varying rates.

import controls can, and do, frequently preclude investments; they can also be used to induce and facilitate investments.

Most investments are made with the primary purpose of earning income and remitting profits by way of dividends, interest or otherwise to the investor. If the currency control system precludes the remittance of income, then the incentive for investment has been drastically reduced. Even in such circumstances some investments may continue to take place when it is found that profits from pre-existing investments cannot be remitted.

LACK OF KNOWLEDGE OF THE AREA IN WHICH THE INVESTMENT COULD BE MADE

Although much of the business community is aware of conditions in the Western European countries and portions of Latin America, there is an overwhelming ignorance as to conditions and investment climate in the less developed countries of the world. Most business organizations have knowledge neither of the under-developed areas nor of the markets in those areas. It is axiomatic that lack of knowledge will tend to preclude an otherwise profitable investment being made. Among those factors which are unknown and which are required to be known in order to facilitate investment are the following:

A. *The Political Situation*

If the investor does not have knowledge and confidence in the political and international stability of a particular area, he is reluctant to invest his funds. Ordinary prudence requires that the investor not only know the geographical facts of the area, but also know the political forces at work, the nuances of the political system, and the probability of the continuation of such economic and political stability as presently exists. The investor must also be aware in advance of the possibility that a nationalistic or chauvinistic government may impose a regime dictating that control of the investment be vested in the nationals of the country in which the investment is made.¹⁴ He must also be aware of the impact of the cold war and of East-West relations on his investment. Otherwise, he may be caught between power policies of the great powers.

B. *Lack of Knowledge of Market Conditions*

Statistical reporting in most of the less developed areas is not a

¹⁴ The recent changes in the attitude of Canadians and the Canadian Government toward the U.S. Government are illustrative of what can happen. The tax imposed on remittances are being changed and a series of changes are being made in customs classifications to retard the import of U.S. capital equipment, 705 House of Commons Debates (Canada) 1002-1014 (daily ed. Dec. 20, 1960).

science. Indeed it is not even an art. In most of these countries, there is no reliable information as to either actual or potential market conditions. Frequently there is a total lack of any remotely reliable statistical information as to production, consumption or requirements. There is often a lack of information as to cash income and as to foreign currency and even local currency available for the purchase of consumer or capital items. Faced with the complete lack of reliable information, the investor is naturally reluctant to expend funds for the manufacture of a product when he does not know whether the market for the product exists or, indeed, whether it will exist in the next ten years. Obviously, under such circumstances, there can be neither projection of earnings nor projection of sales. Consequently, prior to making a substantial investment, the investor must, through his own resources, make his own survey, and be guided accordingly.

C. *Legal and Financial Institutions*

Most investors in the U.S. are thoroughly familiar with our domestic, legal and financial institutions forming the framework within which the investment will be made, regulated and protected. An alien culture with an alien legal structure and unknown banking techniques and business customs often frightens the timid investor. If he is unaware of the local business ethics and the customs of the trade, he is quite naturally reluctant to enter the market, since he is well aware that he may find that his way of doing business will so alienate him from customers and suppliers that he cannot profitably operate. One of the most frightening things to the ordinary businessman is the prospect of facing alien courts and being subjected to the sanctions of an alien legal system. One need only recall the hue and cry raised in connection with the subjection of U.S. servicemen to foreign tribunals in connection with crimes committed abroad to appreciate this fear.¹⁵ The unsophisticated American, perhaps because of our long insularity, somehow seems unable to comprehend that there is even a possibility that he can secure fair and equal treatment before the courts of one of the less developed countries.

D. *Labor Market*

It is axiomatic that labor costs, both direct and indirect, are fundamental to the realization of reasonable earnings. Therefore, precise knowledge must be available as to labor costs. These cannot be determined by simply examining a statistical summary of average wages in

¹⁵ The frenzy and hysteria surrounding the proposition that a U.S. serviceman could be tried in a foreign court reached an abrupt climax in *Wilson v. Girard*, 354 U.S. 524, 77 S.Ct. 1409. For a discussion of some of the underlying issues see 52 American Society of International Law Proceedings, 174 (1958).

any given location. Under many systems, the hidden benefits and indirect labor costs exceed the actual wages paid. There are frequently payroll taxes, both local and national, for welfare payments, as well as for other purposes. Finally, it may be customary in the area where the investment is to be made for the employer to furnish numerous benefits directly to the worker, such as medical care for himself and his family, food allowances or food in kind, maternity benefits, housing, schooling, care for dependents, etc. In order to calculate overhead costs and costs of production therefore, it is essential that the investor have precise knowledge of what he will be called upon to pay.

The more sophisticated investor is also aware that the advent of a major capital project in a particular locality may very well drastically affect a traditional subsistence economy. If the new investment is foreign controlled, there will be a natural tendency for the local population to endeavor to alter the labor cost pattern, often aided and abetted by local officialdom, with a resultant disproportionate inflationary spiral.

Although the lack of knowledge in these areas continues, steps are being taken by the various government and international agencies to fill the void. The U.S. Department of Commerce has for some years published a series of periodicals and pamphlets endeavoring to disseminate information as to the investment climate and the techniques of investment in various foreign nations and areas. These publications outline the basic conditions to be encountered and the procedures to be followed, but they are no substitute for firsthand knowledge or for first-class representation. One series is variously known as "Investment in Japan" or "Investment in Pakistan," etc.¹⁶ These are semi-permanent compilations that cover the investment factors in a given country or area in depth. The Department of Commerce also publishes a series of pamphlets on how to establish a business in a particular country. These pamphlets are issued periodically and give the matter current but summary treatment.¹⁷

In addition, the Bureau of Foreign Commerce in the Department of Commerce maintains an adequately trained staff which conducts

¹⁶ U.S. Department of Commerce, "Investment in India" (1953); "Investment in Turkey" (1956); "Investment in Indonesia" (1956); "Investment in Taiwan" (1959); "Investment in Mexico" (1955). Among the other countries and areas covered in this series are: Central America, Union of South Africa, Federation of Rhodesia and Nyasaland, Australia, The Philippines, Nigeria, Paraguay, Japan, Peru, Venezuela, Pakistan, etc.

¹⁷ This series is published as the World Trade Information Service. See e.g., U.S. Department of Commerce, World Trade Information Service, Economic Reports, "Investment in Honduras, Part 1, No. 61-2.

continuing studies of the investment factors in particular countries and furnishes information on these to the investing public. Some of the personnel of this group in the Department of Commerce are assigned from the Foreign Service and many have served overseas. The Bureau of Foreign Commerce is of invaluable assistance when up to date information is required with respect to some recent change in the laws or regulations of any given foreign country. It frequently occurs that the basic documentation can only be secured through this group. In addition, the Department of Commerce also publishes the Foreign Commerce Weekly which contains the most recent changes in currency controls, fiscal policies and investment laws of the various foreign countries.¹⁸ This weekly provides a current and up-to-date source for all new developments in the field.

As pointed out previously, one of the basic deficiencies in the field of investment in the underdeveloped areas is adequate statistical resources and market information. The United Nations Special Fund, which was established in 1958 has as one of its principal purposes the development of such statistics. Its primary purpose is to investigate resources and requirements. Numerous studies have been undertaken of particular areas, their resources and their possibilities.¹⁹

The United States Department of Commerce and the United States Department of State both maintain personnel overseas whose function is to furnish advice and assistance to the potential investor in foreign areas. Unfortunately, however, in the opinion of many American businessmen, this advice and assistance has not been particularly effective. Although the State Department will occasionally espouse the cause of an American business in a dispute with a foreign government, the more usual reaction is that United States governmental personnel should adopt a hands-off attitude. The complaint is frequently heard from the American businessman that he can secure more real assistance from the Canadian or Swiss Embassies than he can from his own Embassy.

Both the International Cooperation Administration and the Development Loan Fund maintain offices devoted to the problems of private enterprise,²⁰ from the standpoint of developing the private sector of the economies in the developing countries and of the stimu-

¹⁸ U.S. Department of Commerce, "Foreign Commerce Weekly."

¹⁹ United Nations, Press Release GA/EF/628, 28 November 1960; United Nations, Press Release PM/3931, 28 November 1960.

²⁰ The International Cooperation Administration has a Deputy Director for Private Enterprise. Within his office there is an Investment Development Division, as well as the Investment Guaranties Division. The Development Loan Fund also has an office directed toward the stimulation of private enterprise and private investment.

lation of increased private U.S. business participation. One of the functions of these offices is the furnishing of advice, information and assistance to investors in the private areas. This assistance is concentrated on those projects which have ICA or DLF support or which might have ICA or DLF support.

Aside from these governmental and international agencies resources, there are also numerous groups in the universities and in private business which conduct investigation and research in these fields. The products of these researches and investigations are frequently available to the investing community and consequently add to the fund of knowledge available.²¹

FOREIGN AND UNITED STATES TAXES

The lack of knowledge of the combined impact of U.S. and foreign taxes can be a serious deterrent to overseas investment. In the first place, the investor must have knowledge of the local tax system. In some countries the tax systems bear little resemblance to that which is found here in the U.S. An income tax may be levied on the basis of *anticipated* earnings, rather than actual earnings. Again, the tax structure may be based predominantly on sales taxes, turnover taxes, production taxes and other so-called direct taxes. The investor must know the pattern and the impact of these taxes on his proposed investment. Beyond this, however, he must also be aware of the impact of U.S. income taxes. An analysis of this area is beyond the scope of this paper but it should be noted that this is one of the paramount problems which must be investigated prior to the making of an investment. There are indeed those who insist that the tax consideration is the paramount factor in whether people invest overseas or whether they do not.²² This view is disputed by many authorities.²³

²¹ See, e.g., the volumes issued under the auspices of the Harvard Law School, International Program in Taxation; Southwestern Legal Foundation Institute on Private Investments Abroad (2d vol. 1960).

²² A great number of businessmen questioned by the Department of Commerce placed tax questions high on the list of factors influencing investment. U.S. Department of Commerce, Bureau of Foreign Commerce, "Factors Limiting United States Investment Abroad" (1952); Statement Matthew W. Kust, "Hearings on the Mutual Security Act of 1958 Before the House Committee on Foreign Affairs," 85th Cong., 2d Sess. 961-968 (1958).

²³ Barlow and Wender, "Foreign Investment and Taxation" 289, 297; Statement of Stanley S. Surrey, Proceedings of International Investment Law Conference sponsored by the American Society of International Law, afternoon session, February 24, 1956, pp. 4-49 (1956).

WAYS IN WHICH THE RISK OF LOSS OF THE
INVESTMENT CAN BE DECREASED

Many of the European nations operate exporter credit systems providing for government assumption or government underwriting of the so-called political risks, *i.e.*, war, expropriation, confiscation, convertibility, and insurrection. Some of these credit systems also cover the so-called private risks, *i.e.*, the actual risk of loss of the investment as a result of adverse business conditions or simple business failure.

The United States, through its ICA Guaranty Program, provides a limited risk coverage through an insurance system of the so-called political risks.²⁴ Although there has been considerable discussion in the U.S. of either a subsidy for exports or of a more extensive guaranty program for private risks, no definitive action has been taken as of this time. It is interesting to note, however, that President Kennedy, in his message to the Congress, noted the problem of extension of exporter guaranties and of coverage of the private risk.²⁵

The ICA coverage, limited though it is, has proved a significant boon to the investor in development projects. Under this program, which is administered by the Investment Guaranties Division of the Office of Private Enterprise, the United States Government, through the Export-Import Bank, guaranties investments in the less developed areas. These guaranties can cover the following risks:

1. Expropriation and confiscation²⁶
2. War²⁷
3. Convertibility²⁸

There is no coverage for insurrection and civil war.²⁹ The coverage no longer extends to investments made in the Western European countries

²⁴ The Investment Guaranty Program was originated as a part of the Marshall Plan to stimulate private activity in reconstruction programs. Economic Cooperation Act of 1948 § 11(b)(3), 62 Stat. 144 (1948). It is now authorized by 68 Stat. 846 (1954), as amended, 10 U.S.C. § 1933(b)(4) (1958), as amended, 10 U.S.C. § 1933(b)(4) (Supp. I, 1959). The procedures for the program are spelled out in a handbook published by the International Cooperation Administration, United States International Cooperation Administration, Investment Guaranty Handbook (1960), See Rivkin, "Investment Guaranties and Private Investment" 19 Fed. B.J. 357 (1960).

²⁵ 107 Cong. Rec. 1705-1708 (daily ed. Feb. 6, 1961).

²⁶ 68 Stat. 846 (1954), as amended, 22 U.S.C. § 1933(b)(4)(B)(ii) (1958).

²⁷ 68 Stat. 846 (1954), as amended, 22 U.S.C. § 1933(b)(4)(B)(i) (1958).

²⁸ 68 Stat. 846 (1954), as amended by 70 Stat. 558 (1956), as amended, 22 U.S.C. § 1933(b)(4)(B)(ii) (1958).

²⁹ There have been various proposals to extend this coverage to include civil war and insurrection, but these efforts have been unsuccessful. Indeed the House of Representatives adopted language extending the coverage to losses "by reason of war, revolution, or insurrection," H.R. 10082, 84th Cong., 2d Sess. (1956); H.R. Rep. No. 2213, 84th Cong., 2d Sess. (1956).

or Japan, since there is no longer any reason for the U.S. to underwrite investments in these larger areas of the world which have regained economic stability.³⁰

Under the expropriation and confiscation guaranties, the U.S. Government will reimburse the investor if his property is confiscated or expropriated and remains so, without correction, for a one year period. The actions covered probably need not formally be called expropriation or confiscation, although there has been no history or insurance payouts as yet against which definitive administrative policies on interpretation can be realized.

The coverage under war risk extends to losses resulting from war but not including consequential damages.³¹ It does not extend to losses from riot, civil disturbances nor to insurrection. Although this guaranty would be of no great significance in the event of a thermonuclear cataclysm (and all insurance is likely to be meaningless if that takes place³²), it does provide insurance against the results of a brush fire action.

The convertibility coverage extends to the conversion of profits from the investment into dollars and also to the conversion of the original investment itself into dollars,³³ both at the rate at the time of conversion. It applies when the convertibility rules of the host country are so changed as to eliminate the conversion of the investment and the profits. In other words, it is a guaranty that the convertibility rules will not be so changed as to prevent convertibility of earnings into dollars as a practical matter.

The fee for each type of coverage under the ICA Guaranty Program is one-half of one percent of the investment.³⁴ This is obviously

³⁰ A 1959 amendment to the Mutual Security Act of 1954, as amended, 68 Stat. 832, as amended, 10 U.S.C. § 1731-1951 (1958), limited the areas where investment guaranties might be made to areas approved by the President as furthering the development of the economic resources and productive capacities of economically underdeveloped areas. . . ." 73 Stat. 251, 10 U.S.C. (Supp. I, 1959).

³¹ ICA, Investment Guaranty Handbook, 21 (1960). Only \$676,053 of guaranties against war risk had been written out of a total guaranty coverage of \$545,334,272 as of Sept. 30, 1960.

³² Lehrer, Tom, "An Evening Wasted with Tom Lehrer" (1960). The following quotation is from his song dealing with a possible atomic holocaust and entitled "We Will All Go Together When We Go":

"No one will have the endurance to collect on his insurance; Lloyds of London will be loaded when they go."

³³ 70 Stat. 558 (1956), as amended, 10 U.S.C. 1933(b)(4)(B)(ii) (1958); ICA, Investment Guaranty Handbook, 13-16 (1960).

³⁴ The maximum statutory fee is 1% for each guaranty and 1% for each coverage. 68 Stat. 846 (1954), as amended, 10 U.S.C. § 1933(b)(4)(E) (1958). Administratively, however, the fee charged has been fixed as one-half of one percent. ICA Investment

a very low rate for such extensive coverage. The combination of this low rate and of the excellent publicity program conducted by the ICA Guaranty Division, together with an increasing interest in international investment, has resulted in a very broad usage of the benefits of the program.³⁵

The program is not operative in all of the less developed countries. Prior to the program's becoming effective in any given nation, it is necessary that the U.S. and the host nation conclude a basic guaranty agreement providing for the operation of the program in that country.³⁶ Some nations, for policy reasons of their own, do not wish to conclude any guaranty agreement. Other nations refuse to enter into agreements with the U.S. with respect to certain coverages, since the host nation may believe that such a provision would infringe on its sovereignty. This would result from the fact that the host government must agree that it will accord the United States equal treatment with respect to subrogated claims.³⁷ Consequently, some foreign governments have felt that they could not limit their scope of action even though the failure to institute the guaranty program might result in less U.S. investments.

The procedures under the program are relatively simple. Anyone who is proposing to make an investment simply writes the ICA Guaranty Division, requesting approval in principle for a proposed investment. If the investment meets the required criteria, then the Guaranty Division issues a so-called "no prejudice" letter which in effect provides that any funds expended from the date of the "no prejudice" letter may be included in the guaranty coverage. Later, formal application is made on a very simple form,³⁸ and if the investments meet the clearly formulated tests, such as American ownership, a guarantee (insurance) contract will be issued.³⁹

LACK OF CAPITAL

Without capital, there can be no investment.

The larger corporations are well aware of investment possibilities

Guaranty Handbook, 16, 19, 23 (1960). There is also a lesser fee of one-fourth of one percent for so-called stand-by guaranties of convertibility. *Id.* at 16.

³⁵ As of September 30, 1960 a total of \$545,334,272 had been written and \$1,207,017,771 were in process. Statistics supplied by Office for Private Enterprise, Investment Guaranties Division, ICA.

³⁶ The typical agreement provides *inter alia* that the foreign government approval will be secured for all guaranteed projects, that the U.S. Government may be subrogated to any claims arising from losses. ICA Specimen Agreement (1957).

³⁷ *Ibid.*

³⁸ ICA Form ICA-20-2(4-57).

³⁹ International Cooperation Administration Specimen Currency Convertibility (Equity) Contract (1957).

abroad and have no great difficulty in securing capital either from their own resources or by borrowing. This is not true, however, with respect to the small and the medium-sized corporations; indeed, it is not true with respect to the largest corporations when it comes to major undertakings, such as the Volta River Project and other hundred million dollar projects.

When the medium-sized investor looks for capital for an overseas investment there are three principal sources of private funds. The first is the relatively small number of internationally minded banks. The second is the international investment companies such as Trans Oceanic-AOFC, and the third is the pool of private risk capital. If the investor is not thoroughly established and if the investment does not look completely secure the banks are unavailable; indeed, they are frequently unavailable, even if the investment is sound and the investor is well known. The international investment companies perform a real service, but the resources of these groups are comparatively small and for this reason only the most gilt-edged proposal will receive consideration. When the investor turns to the pool of private risk capital he frequently finds that the demands in terms of interest rates, discounts, premiums and repayment terms, make the use of this source prohibitive. Again, the number of persons willing to invest funds in such foreign undertakings is small.

There is, however, another major source of funds for overseas development which is the U.S. governmental agencies and international lending agencies. Among these agencies are the following:

1. The U.S. Export-Import Bank
2. The U.S. Development Loan Fund
3. The U.S. International Cooperation Administration
4. The International Bank for Reconstruction and Development
5. The International Finance Corporation
6. The International Development Association
7. The Inter-American Development Bank

The Export-Import Bank

The Export-Import Bank, which was established in 1934, originally had as its primary purpose the financing of export transactions with the end in mind of stimulating U.S. exports.⁴⁰ During the days

⁴⁰ The Export-Import Bank of Washington, a Government Corporation now operates under the authority of the Export-Import Bank Act of 1945, 59 Stat. 526, as amended, 12 U.S.C. § 635 (1958). The Bank was originally organized as a District of Columbia banking corporation under Ex. Ord. No. 6581 of Feb. 2, 1934 and was continued as an agency of the United States Government by 49 Stat. 4 (1935). Export-Import Bank of Washington, "Report to the Congress, 1934-1959" (1959); Export-Import Bank of Washington, Press Release October 4, 1959.

preceding the Marshal Plan, it was also used as the vehicle for large scale loans to the European countries. As the years went by, however, the Export-Import Bank has become more heavily engaged in development activities.⁴¹

There are three forms of financing available for development projects. The first of these is the so-called project loan, under which the Eximbank makes substantial sums of dollars available to a foreign entity (which can be an American subsidiary) for projects overseas. The requirements of this type financing are exceedingly stringent. The loan application and the procedures which are followed closely parallel those used in regular banking transactions. The applicant for a loan must file complete and detailed engineering, financial and market data. He must demonstrate through the means of market surveys and economic feasibility studies the practicality of the proposed project.⁴² The Bank's engineers and the Bank's economists thoroughly analyze the proposal and in many instances require extensive and basic revisions in the project prior to the granting of a loan. In general, the Export-Import Bank tends to confine its loan activities to what are essentially bankable transactions, apart from the length of the loan and the fact that the enterprise is located in a foreign country.

All loans are made in dollars except for so-called Cooley Loans, which will be discussed below. Repayment is in dollars and interest rates and credit terms approximate those of the commercial banks.

Another form of developmental financing available under Export-Import Bank procedures is the so-called medium-term credit financing.⁴³ Under these procedures the Export-Import Bank will lend funds up to approximately five years if a commercial banking institution will assume a part of the loan. In such cases, the Export-Import Bank will usually rely solely on the commercial and financial judgment of the commercial lending institution.

The third form of financing available from the Export-Import Bank are the so-called Cooley Loans. The Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480),⁴⁴ provides for the sale of United States surplus agricultural commodities under prescribed conditions to foreign countries in return for local currencies of the purchasing nation. These local currencies received

⁴¹ In 1960, new long term project and development loans amounted to \$641 million out of total loans and guaranties issued that year of \$897 million. Export-Import Bank of Washington, "Eximbank Reports," January 1961, 2.

⁴² Export-Import Bank of Washington, "Application for Eximbank Participation in Financing Export of Products of U.S. Origin" (1960).

⁴³ Export-Import Bank of Washington, Press Release, March 17, 1960.

⁴⁴ Agricultural Trade Development and Assistance Act of 1954, as amended (P.L. 480), 68 Stat. 454, as amended, 7 U.S.C. § 169-1736 (1958) (Supp. I, 1959).

for such sales belong to the United States but may be used only pursuant to the terms of the agreements under which such sales are made. Section 104(e) of the Act specifies that a portion of the proceeds of such sales shall be used for loans to United States business firms and their branches, subsidiaries and affiliates for business development and trade expansion.⁴⁵ Loans made pursuant to this provision are administered through the Export-Import Bank and the procedures and requirements for such loans are essentially similar to the requirements for a project loan.⁴⁶

The Development Loan Fund

The Development Loan Fund was established in 1957 for the purpose of making so-called "soft loans" for developmental projects.⁴⁷ A soft loan is not necessarily a bad loan, but rather one where the repayment terms are easier than they would be under a bank loan and where the loan is not bankable commercially. Since its inception it has loaned approximately \$1.8 billion for these purposes. The loan application technique⁴⁸ is essentially similar to that of the Export-Import Bank except that the requirements are not quite so rigid and the applicant is therefore allowed more flexibility. Furthermore, the Development Loan Fund is less apt to dictate the financial and engineering details of a given project. Loans made by the Development Loan Fund may extend for a period of up to twenty years. The interest rate charged for private projects and for money earning projects is that used by the Export-Import Bank. For so-called infrastructure loans which do not earn income, the interest rate is lower. The distinguishing feature of the Development Loan Fund loan is that it may be, depending on the circumstances, repayable in local currency rather than in dollars.⁴⁹ This feature permits the making of loans in countries where the prospect of earning foreign currencies is so small that an investment would not otherwise be feasible.

⁴⁵ Agricultural Trade Development and Assistance Act of 1954, as amended (P.L. 480), 68 Stat. 454, 7 U.S.C. § 1704(e) (1958).

⁴⁶ Export-Import Bank of Washington, "Foreign Currency Lending" (1958).

⁴⁷ Mutual Security Act of 1954, as amended, 70 Stat. 566, 22 U.S.C. § 1870 (1958); 71 Stat. 357, as amended, 22 U.S.C. § 1871 (1958); 74 Stat. 135, P.L. 86-472, Ch. II § 202(a).

⁴⁸ United States Development Loan Fund, "Development Loan Fund" (1958).

⁴⁹ The Development Loan Fund had, as of February 28, 1961, committed \$1,844 million to loans and guaranties. Firm loan or guaranty agreements had been signed covering \$1,545.9 million. Of the former amount \$1,434.7 million is repayable in local currencies, \$346.7 is repayable in hard currencies, i.e., dollars, pounds, etc. and the balance has not been determined. *Source*: U.S. Development Loan Fund, Office of Secretary-Treasurer.

The International Cooperation Administration

The International Cooperation Administration is not primarily a loan organization. Originally, loans to the less developed areas were made through the aegis of the International Cooperation Administration but in 1959 it was determined that the ICA would confine itself to activities other than loans for development projects. Nevertheless, the ICA does continue to make some loans for this purpose and also to make some grants. The extent of activities of the ICA, including technical assistance,⁵⁰ the furnishing of defense support,⁵¹ the furnishing of so-called special assistance.⁵² Its other innumerable activities are beyond the scope of this paper. Nevertheless, the ICA plays a vital role in overseas investment. For example, the Development Loan Fund has funds itself to finance economic feasibility studies, engineering surveys, etc. Where a project seems to be promising and the borrowers and the host countries do not have resources available for such studies the ICA may, in some cases, through its technical assistance program or through other means, finance such studies. Again, in certain instances where a particular project has official government participation or official government approval, the ICA may through one of its financial assistance programs finance a portion of the project. It may either by loan or by grant, to the foreign country, assume a portion of the cost of equipment or services. Again, it may be found that it is necessary to have additional training for the managerial and technical personnel who will operate the plant or facility once it is established. The ICA technical assistance program will, in many instances, finance training of personnel in the United States or elsewhere, or, in some cases, finance the sending of technical personnel to effect "on the spot" training.

The International Bank for Reconstruction and Development

The World Bank was established for the purpose of effecting reconstruction in Europe and other areas of the world following World War II as well as for developmental activities in other areas.⁵³ The development aspect has become paramount. This international agency, which as of March 1960, had 49 nations as members, has tended to

⁵⁰ Mutual Security Act of 1954, as amended, 68 Stat. 841, 842 as amended, 22 U.S.C. § 1891-1894 (1958, Supp. I, 1959).

⁵¹ Mutual Security Act of 1954, as amended, 68 Stat. 838, as amended, 22 U.S.C. § 1841 (1958, Supp. I, 1959).

⁵² Mutual Security Act of 1954, as amended, 71 Stat. 360, as amended, 22 U.S.C. § 1920 (1958, Supp. I, 1959).

⁵³ "Text of Articles of Agreement, International Bank for Reconstruction and Development," Staff of House Foreign Affairs Committee, Staff Memorandum on International Lending Agencies, 86th Cong., 2d Sess. 47-68 (1960).

concentrate on major capital development. By and large, it has eschewed the smaller projects. Any project undertaken by the World Bank requires the endorsement and support of the foreign government concerned. It has tended to concentrate on major projects, such as combined hydroelectric and irrigation projects, major transportation undertakings, and the like, although it has on occasion participated in industrial projects. These industrial projects have usually been of such a size and of such character as to be beyond the reach of the small or medium-sized investor. The procedures for the World Bank are again somewhat similar to commercial banking practice and the approval or disapproval of a loan, as well as the processing of the loan through that institution, is roughly similar to that found in any large banking organization.

The International Finance Corporation

The International Finance Corporation, which has a capital of \$100 million, was formed as an offshoot of the World Bank to stimulate private projects of a smaller size.⁵⁴ Contrary to the requirement of the World Bank that a government endorse a project or espouse a project, governmental participation will preclude approval of any project in the International Finance Corporation. The International Finance Corporation makes an investment in return for which it takes stock options, convertible debentures, etc., as part of its assistance and, at the same time, loans funds to the enterprise. Thus, the cost of the assistance is higher than that of other "aid institutions," but lower than financing available in the local country. While the IFC avoids direct equity interests, such as the acquisition of common stocks, which would give it ownership participation, it is currently proposing that it be authorized to invest directly in common (voting) stock.

The International Development Association

The International Development Association is a second offshoot of the World Bank.⁵⁵ No loans have as yet been made. Its purpose is the furtherance of international development and it is contemplated that any loans made will be softer in their terms and requirements than the World Bank or the IFC. It can best be described as the international counterpart of the DLF.

⁵⁴ "Text of Articles of Agreement, International Finance Corporation," Staff of House Foreign Affairs Committee, Staff Memorandum on International Lending Agencies, 86th Cong., 2d Sess. 100-112 (1960).

⁵⁵ "Text of Articles of Agreement, International Development Association," Staff of House Foreign Affairs Committee, Staff Memorandum on International Lending Agencies, 86th Cong., 2d Sess. 144-161 (1960).

The Inter-American Development Bank

The Inter-American Development Bank has just recently made its first loans. It is an organization whose membership comprises the various members of the Organization of American States. Its purpose is to facilitate development in the less developed areas of Latin America.⁵⁶ The procedures and the techniques are closely parallel to those of the Development Loan Fund. Loans may be repayable in either dollars or in local currencies of the borrowing country. The interest rates and the terms of loans will probably follow closely those utilized by the Development Loan Fund.

Utilization of Governmental and International Credit Facilities

If an individual or a corporation is contemplating the establishment of a plant or facility overseas, and requires capital, the solution is not to simply walk into one of the lending agencies and request a loan. The first step in the procedure is to establish the requirements for the new undertaking by means of market surveys and economic feasibility studies. Depending upon the outcome of such studies, the next step is to develop the necessary engineering and technical data, including site selection, plant layout, pro forma balance sheets and basic engineering design. Once these steps have been accomplished, the investor must then prepare its financial plan and select the lending institution which under the circumstances is available to consider financial assistance. As pointed out previously, he may be able to secure financing for some of the above preliminary steps through the International Cooperation Administration or through the agency of some philanthropic foundation. The selection of the agency involved depends upon the requirements of the transaction. There follows for ready reference a summary of the lending policies and of the organization of the various international lending agencies prepared by the Development Loan Fund.

The investor will find that at all of the above agencies the debt equity ratio must generally be at least 50-50. If the transaction will earn dollars or other foreign exchange, and if it approximates a commercially bankable transaction, then the choice will be the Export-Import Bank. If, however, the proposed investment would not meet commercial banking criteria or if it will not earn substantial amounts of dollars or other hard currencies, then the choice must lie among the remaining lending agencies.

All of the United States lending agencies now require, except in

⁵⁶ "Articles of Agreement, Establishing the Inter-American Development Bank," Staff of House Foreign Affairs Committee, Staff Memorandum on International Lending Agencies, 86th Cong., 2d Sess. 118-143 (1960).

unusual circumstances, that the equipment and services financed be of American origin; therefore, if it is proposed to utilize European or Japanese equipment, the approach must be to one of the international lending agencies, or to European government credit facilities. On the other hand, if the investor is willing to utilize all American equipment and services, the choice between the international and the United States lending agencies is not so important.

Once it has been determined to which agency the application will be made, the loan application is then drawn in accordance with the requirements of the particular lending agency. Some of the agencies require a particular format, but each agency has its own requirements as to what must be included in the loan application. The content of the application will frequently determine the ultimate success. After the application has been received by the lending agency, it will then usually be reviewed by a policy or steering committee to see whether the requested loan meets the criteria of the particular agency. If it does, it is then referred to a loan committee comprised of an economist, an attorney, an engineer, and other appropriate personnel. The loan committee will then review the application in minute detail. The loan committee will almost inevitably request additional information and additional detail from the loan applicant. It will also frequently recommend to the applicant that he alter the terms of his request either as to financial structure or as to engineering detail. After the loan committee has completed its consideration of the application, it will then make its recommendations to the governing body of the institution, which will then approve or disapprove the application.

Within the framework of the above outline, there are infinite variations as to nuance and as to detail. In many cases, a knowledge of the procedures and of the attitude of the agency concerned is vital to the successful prosecution of the application. In some cases, the applicant may also be able to tie in more than one agency in a given project. For example, he may turn to both the International Finance Corporation and the Export-Import Bank to provide funds for the expansion of production of the raw material, or he may then turn to another of the lending agencies for the funds for the construction and operation of the actual facility. He may, in turn, secure a portion of the required funds for surveys from the International Cooperation Administration or if there is foreign government participation in the foreign country, some of the actual materials and equipment required might be financed through the International Cooperation Administration.

A Word to the Future

Whatever the risks, however strange the financial, political and business mores of the developing countries may be, the possibility of

U. S. AGENCIES ENGAGED IN OVERSEAS FINANCING OPERATIONS

Prepared for use by Mr. Vance Brand, Managing Director of DLF, in connection with his address to the Far-East America Council, New York, October 6, 1960.

| | EXPORT-IMPORT BANK (Eximbank) | | DEVELOPMENT LOAN FUND (DLF) | | INTERNATIONAL COOPERATION ¹ ADMINISTRATION (ICA) | |
|----------------------|---|---|---|--|--|--|
| | Dollars | Foreign Currencies (Cooley Loans) | Dollars | Foreign Currencies | Foreign Currencies | Investment guaranties |
| Purpose | Assist in financing, and facilitate, U.S. imports and exports. | Assist foreign economic development and expansion of markets for U.S. surplus agricultural commodities. | Aid in developing economic resources and productive capabilities of less developed countries. | Encourage multi-lateral trade and economic development. | Encourage and facilitate U.S. private investment in under-developed countries—especially in equity and licensing arrangements. | |
| Resources | \$7 billion of which \$1 billion capital stock subscribed by Treasury; \$6 billion borrowing authority. | Up to 25% of proceeds of sales of surplus agricultural commodities. | Annual appropriations (\$1.95 billion to date), plus loan repayments. | Loan repayments and certain foreign currencies arising from surplus commodity sales and Mutual Security loans. | Part of proceeds of sale of surplus agricultural commodities. | Authorization issue \$1 billion of guaranties; with borrowing authorized from Treasury of \$200 million. |
| Nature of Loans | 1. Project loans i.e. to foreign gov'ts and private enterprises (U.S. and foreign) for purchases of U.S. goods and services for development projects abroad; and 2. Exporter credits. | Loans to (1) private U.S. companies only, including their subsidiaries and affiliates abroad, and (2) U.S. or local private companies for expanding markets for U.S. agricultural commodities abroad. | Loans to foreign governments and loans of investments in private enterprises (U.S. or foreign) for projects or programs contributing to economic development. | Loans to governments of countries receiving U.S. surplus agricultural commodities for development projects. | Not applicable. | |
| Nature of Guaranties | Full or partial guaranties of loans by private lenders for purposes noted above | Not applicable. | Full or partial repayment guaranties of loans by private lenders for purposes noted above, with reserve of not less than 50% of DLF's liability. | Not applicable. | Guaranties of private U.S. investors against inability to convert foreign currency earnings or capital into dollars, and losses from confiscation, nationalization or war. | |

| Relationship to Other Sources of Financing | Cannot compete with private capital, and does not loan where private capital available on reasonable terms. | None. | Cannot compete with private capital, and must take into account whether financing obtainable on reasonable terms from free world sources—including Eximbank or IBRD. | None. | None. |
|---|--|--|--|--|---|
| Maturity of Loans | Generally up to 7 years on exporter credits; up to 20 years on project loans. | Up to 10 years. | Up to 30 years. | Undetermined. | Up to 40 years. |
| Currency of Repayment | U.S. Dollars. | Foreign currency | U.S. Dollars, and/or foreign currencies. | Foreign currency loaned. | Foreign currency loaned, with option to pay in dollars. |
| Interest rate or fee | Current rate 5%—6%. | Related to prevailing local rate. | 3½% for basic governmental projects; 5½% for profit earning type projects. | 4% and up depending on nature of project. | 4%. |
| Where proceeds of loans must be spent, including guaranteed private loans | Generally in U.S. | In country whose currency is loaned. | Primary emphasis on U.S. procurement. | In country whose currency is loaned, unless that country agrees otherwise. | Primarily in country whose currency is loaned. |
| Decision Making Body | Board of Directors, with advice of National Advisory Council on International Monetary and Financial Problems (NAC). | Board of Directors, subject to supervision and direction of President, foreign policy guidance of Secretary of State, and advice of NAC. | Title II of Chapter II of Mutual Security Act of 1954, as amended. | Same, plus Section 104 (c) of Public Law 480 and Section 505 of Mutual Security Act. | Section 402 of Mutual Security Act of 1954, as amended; and Sections 104 (d) and (e) of Public Law 480. |
| Legal Authority | Eximbank Act of 1946, as amended. | Sec. 104(e) of Public Law 480 (Cooley Amendment) | | | Section 413(b)(4) of Mutual Security Act of 1954, as amended. |

1 ICA primarily extends grant assistance to foreign governments. Shown here are only its foreign currency lending and private investment guaranty programs. In special cases ICA also extends dollar loans to foreign governments for defense support and special assistance (\$57 million to 4 countries in FY 59) with repayment in dollars or local currency, and interest at 3½% to 4½%.

substantial profits will inevitably produce increased investments by American companies in developing countries.

From a foreign policy point of view this is good, provided the American investor conducts himself properly, always recognizing that his conduct will contribute to the shaping of the attitudes of the peoples in the developing countries toward the United States. The American investor must thus recognize that there is more at stake in the success of the investment, and the means by which he attempts to achieve success, than his investment dollars and potential profits.

On the other side of the coin, the United States Government must also recognize that the role it plays in inducing private American investments abroad can be substantially increased and its methods improved. First, the confusion of policies among financing and lending agencies can be eliminated; perhaps this will be realized, or at least mitigated, if and when President Kennedy's proposed reorganization of the ICA and DLF is approved by the Congress. Further, where use is made of DLF funds, the role and responsibility of the private participants, the investor and its financing institution, can be increased. One way this can be accomplished is to make meaningful the authority of the Development Loan Fund to guarantee investments abroad.⁵⁷ A proper and extensive utilization of this authority would place greater responsibility on the investor and the American private financing institution to determine the economics of the project; properly administered, it would make possible additional aid out of appropriated funds, since less than 100% of the amounts so guaranteed would have to be set aside by the Development Loan Fund.

Perhaps most important, however, for both the investor and for our country will be the active recognition of the fact that the investment must primarily be for the benefit of the developing country; that our flag, in the old sense of the British Empire, does not follow the investment and it assists only in directing it to the foreign shore, not in controlling it once there. But our flag should join that of the local country, not only in developing a climate for investment, but in creating a continuing climate for local respect of the basic advantages of private enterprise. You cannot defeat communist infiltration by negatively proclaiming that the communist system is not best for the emerging nations. The actual on the spot demonstration of the opera-

⁵⁷ The basic authority of the Development Loan Fund, as originally enacted, Sec. 6 of the Mutual Security Act of 1957, 71 Stat. 357, contained a provision authorizing the Development Loan Fund to make guaranties. 22 U.S.C. 1873(b) (1958). The provision was not clear as to whether a 100% reserve must be maintained against such guaranties. In 1959 a provision was added making it clear that the Development Loan Fund could in fact maintain fractional reserves, 73 Stat. 248, 22 U.S.C. 1873(b) (1958, Supp. I, 1959).

tions of a properly conducted private enterprise system is the best, if not the only way, to induce adherence to our way of economic life in the cold war. To do this, we must assist these countries in establishing financing systems, patent, trademark and copyright protection, protection against unfair trade practices and the formation of abusive cartels and trusts, and so forth, but always geared to their, and not our, mores and philosophies. It is not our official protection to our private investments that is required; it is our willingness officially to assist them in developing their own brand of private economic system to which our private American investors must conform.